

AUTHORIZED SIGNATURE _____
DATE _____

SPECIAL USE MANAGEMENT BUREAU

Management Memo: SUMB 02-1-1

Last Update: 07-29-2002

Updated by: LMA

Subject: ROAD USE POLICY

The intent of this policy is to clarify and recognize the variety of uses for which road easements are granted across state trust lands.

Pursuant to §77-2-101, the Department may accept applications for easements for all uses enumerated in that statute and in §70-30-102. Included within these statutes is the ability to grant easements for public and private roads.

Further, pursuant to §77-1-130, the Department may accept applications for easements for public and private roads constructed prior to 1997 from county and state government and any person utilizing such roads to access private lands. If approved by the State Board of Land Commissioners, the Department shall issue an easement recognizing use of the road for all purposes consistent with its historic use.

It is therefore the policy of the Department that the following purposes for which road easements are granted shall be construed as granting the described rights therein:

Private Access for Residential Purposes – Non-Historic:

Any such easement properly applied for and granted by the State Board of Land Commissioners shall allow access to the applicable number of residences or vacant residential lots as applied for, including all garages, sheds, barns or other associated outbuildings for a limited term not to exceed 30 years from date of issuance of the easement document pursuant to the Private Driveway Policy adopted by the State Board of Land Commissioners on June 19, 1995. Use of the road for other purposes, such as recreational purposes (e.g. hunting, fishing, outfitting¹), routine maintenance and property management (including the ability to clear and/or thin timber and other natural fuels to create defensible space) is also implied. The ability to travel upon the road across state land is extended to the applicant's invitees and guests, but only to the extent of allowing ingress and egress across state land for the purpose of accessing applicant's private lands. Use of any portion of the road on State land for any purpose other than ingress/egress as stated herein, including use in conjunction with recreational activities conducted on state land, is subject to the provisions of ARM 36.25.149 and authorization by the Department. Any unauthorized use of the road on State land by the applicant and/or their

¹ For discussion on outfitting, see Page 4

invitees and guests may result in mitigative actions being taken by the Department as deemed necessary. Maintenance for the road across state land will be the responsibility of the applicant proportionate to their share of the use of the road.

Private Access for Farm/Ranch, Timber Resource Management and Land Management Purposes – Non-Historic:

An applicant may apply for an easement to access their private lands for the purposes of conducting normal farming and ranching operations. Said use shall be consistent with practices relating to farming and ranching, including movement of all equipment, machinery and livestock. Use of the road for other purposes, such as recreational purposes (e.g. hunting, fishing, outfitting¹) and clearing and/or thinning of timber or other natural fuels for fire hazard reduction purposes upon applicant's private land is also implied. The ability to travel upon the road across state land is extended to applicant's invitees and guests, but only to the extent of allowing ingress and egress across state land for the purpose of accessing applicant's private lands. Use of any portion of the road on State land for any purpose other than ingress/egress as stated herein, including use in conjunction with recreational activities conducted on state land, is subject to the provisions of ARM 36.25.149 and authorization by the Department. Any unauthorized use of the road on State land by the applicant and/or their invitees and guests may result in mitigative actions being taken by the Department as deemed necessary. Maintenance for the road across state land will be the responsibility of the applicant proportionate to their share of the use of the road.

Private Access Under Historic Right of Way Law:

A person may apply for a historic access easement across state land to access their private lands so long as the road was in place prior to 1997. Applicant may only apply for access to their private lands for the use that historically existed up to the year 1997. If the use of the private lands changed since 1997 (e.g. farm land in 1997, subdivided into residential development in 1998), applicant does not qualify for historic road easement. Easements may be granted for the purpose of accessing private lands for farm and ranch purposes, existing subdivisions and residential purposes, timber resource and land management. If granted by the State Board of Land Commissioners, the Department shall issue a permanent, perpetual easement to the applicant. Use of the road for other purposes, such as recreational purposes (e.g. hunting, fishing, outfitting¹), routine maintenance and property management (including the ability to clear and/or thin timber to create defensible space or for fire hazard reduction purposes) upon applicant's private land is also implied. The ability to travel upon the road across state land is extended to applicant's invitees and guests, but only to the extent of allowing ingress and egress across state land for the purpose of accessing applicant's private lands. Use of any portion of the road on State land for any purpose other than ingress/egress as stated herein, including use in conjunction with recreational activities conducted on state land, is subject to the provisions of ARM 36.25.149 and authorization by the Department. Any unauthorized use of the road on State land by the applicant and/or their invitees and guests may result in mitigative actions being taken by the Department as deemed necessary. Maintenance for the road across state land will be the responsibility of the applicant proportionate to their share of the use of the road.

RECIPROCAL ACCESS/EASEMENT EXCHANGES:

Pursuant to §77-1-617 the Department may negotiate reciprocal access agreements to access isolated parcels of state trust land. The Department's authority to conduct land exchanges is found in §77-2-201 through §77-2-203. To further the Department's objective in obtaining access to both fully isolated tracts and those tracts which may already have access to a portion of the tract, procedures for the development of both reciprocal and easement exchange proposals have been adopted.

In certain situations, it is desirable to acquire 60-foot right of way widths with cooperators. More specifically, wherein a road serves as a collector road; a road segment will connect to other roads established at 60-foot widths; a road has multiple lateral roads; the topography is such that a road can be constructed to maintain a 9-11% grade; a road has looped connection to an alternate egress/ingress location; a road has potential for high traffic volume based on potential use (resort, restaurant, subdivision, etc.).

Circumstances wherein a 60-foot right of way width may not be necessary may include a dead-end road segment with limited access to favorable topography for future development; limited potential for extension or connection to another road segment; topography too steep to maintain acceptable road grade standards; failure to qualify as an alternate emergency ingress/egress route; other environmental limitations and constraints.

It is the policy of the Department to negotiate 60-foot easements and secure rights to access land for all lawful purposes when applicable. It is not in the Departments or trust beneficiaries interest to secure fewer rights than rights granted to reduce the cost of the easement. Unrestricted legal access benefits all resource management opportunities.

Recognizing that access rights for the public to recreate on state trust lands is an issue, the Department shall, whenever possible and consistent with fiduciary responsibilities, secure access rights for the public when negotiating reciprocal access and easement exchanges. While motorized access is preferable, the Department would be willing to accept access by non-motorized means (e.g. walk-in, horseback). As part of the Reciprocal Access/Easement Exchange Agreement, public access shall be specifically addressed.

ROAD ACCESS VALUATION:

All access easements issued across state trust lands shall be valued at the underlying land value. Road and road value improvements should be considered as deemed appropriate by the area office. Compensation should not be tied to potential profits or revenue streams associated with use and potential activities on private lands. Whenever possible, the Department will make use of the previously established fee schedules to establish easement compensation. When necessary, an appraisal of the state lands may be requested through the Special Uses Bureau Right of Way Manager.

ASSIGNMENTS OF ROAD EASEMENTS:

Easements issued for access across state trust lands are assignable to other parties so long as the terms and conditions of the easement have been met and there are no outstanding issues in regards to reclamation, maintenance, etc. The party assuming the easement becomes obligated for performance of the terms and conditions of the easement. The assignment allows the assigned party to enjoy use of the road for the uses specified in the original easement grant.

RECREATIONAL USE (OUTFITTING):

In Weitz v. DNRC the Supreme Court found that the recreational use statutes and rules were not intended to restrict or address lessee's use of their leased lands when not recreating nor was it intended to restrict their use of their adjacent private land. Furthermore, the Court found that the Legislature notably distinguished lessees of State lands as a separate class from the public. The Court concluded that "application of the rule prohibiting vehicle travel across State lands when applied to a lessee traveling by existing roadways to conduct activity elsewhere is an overbroad and unlawful application of the regulations and is unenforceable.". In their summary statement the Court stated that traversing leased State lands in order to conduct outfitting on private lands of the lessee does not constitute outfitting on State land.

Based on this decision, the Department has determined that, in addition to lessees, the aforementioned use will also be applicable to legal holders of easements across State lands. DNRC authorizes outfitting on State Trust lands under a Special Recreational Use License for Outfitting (SRUL). If use of the road on State land will be in conjunction with recreational activities conducted under authorization of a SRUL, such use is subject to the terms and conditions in the SRUL and authorization shall be at the discretion of the Department's Area Managers, however, such authorization shall not be unreasonably withheld. Road use should be authorized under the following conditions:

- 1) Limited or no public conflict because public access to affected tracts is restricted by private ownership (Note: In compliance with current policy, if the tract is legally accessible and public use of the road is restricted/prohibited, use should not be authorized to individuals, including outfitters)
- 2) Road does not intersect or link any other public or designated roads in the area
- 3) No imminent threat of adverse environmental impacts or resource damage
- 4) Consistent with fiduciary responsibilities, just compensation is obtained for the right conveyed